IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Regular Second Appeal No.657 of 2005.

Date of decision: 08.09.2006

Khekhu Ram & Others **….Appellants**

Versus

Smt.Giri **….Respondent**

Coram

The Hon'ble Mr.Justice Surjit Singh,J.

Whether approved for reporting ?[1]

For the Appellants: Mr.Sanjeev Kuthiala, Advocate.

For the Respondent: Mr.Kuldip Singh, Senior Advocate with Mr.Karan Singh Kanwar, Advocate.

Surjit Singh,J.(Oral).

Heard and gone through the record. A suit was filed by respondent Smt.Giri against present appellants for recovery of a sum of Rs.3,16,764/- on account of the estimated cost of a house which the appellants-defendants had agreed, in an earlier litigation, to construct for the respondent-plaintiff, but was not constructed. The agreement provided that in case the appellants failed to construct the house within the stipulated period, they would be liable to pay the cost as worked out by the Public Works Department Authorities at the rates approved by the Public Works Department.

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[1] *Whether the reporters of Local Papers may be allowed to see the judgement*?

Admittedly, the appellants did not get constructed a house in terms of the agreement. The plaintiff then got the estimate of the house prepared from PW-2 Surdershan Kumar Sharma, a Junior Engineer of Public Works Department. As per that estimate, which is prepared according to the government approved rates, the amount has been worked out at Rs.3,16,764/-. Plaintiff then filed a suit for recovery of the aforesaid amount. Appellants-defendants contested the suit. They alleged that the suit was not maintainable, plaintiff had no cause of action and she was estopped to file the suit by her acts and conduct. On merits, it was stated that the estimate had been prepared by a Junior Engineer of Public Works Department in his individual capacity and not in official capacity and that the amount assessed by him, as estimated cost, was grossly on the higher side.

Trial Court decreed the suit, after recording the evidence of the parties and recording the finding (based on the evidence) that the estimated cost of the house, as worked out by the Junior Engineer was correct. Appeal filed by the appellants in the Court of District Judge, stands dismissed.

Learned counsel representing the appellants submits that as per agreement the cost was required to be assessed by the Public Works

Department, but in the present case assessment has been done by a Junior Engineer, though from Public Works Department, in his personal capacity. It is further his submission that the Junior Engineer has assessed the cost not according to the Public Works Department rates but according to the market rates.

There does not appear to be any merit in either of the two submissions. The fact remains that the estimate has been prepared by a Junior Engineer of Public Works Department. The statement of estimate, which is available on record of the trial Court, as Ex.PW-1/E, shows that the estimate was prepared by the Junior Engineer and counter-signed by an Assistant Engineer, which fact shows that the estimate is prepared by the Public Works Department. Though the Junior Engineer who had prepared the estimate while appearing in the witness box, stated that the estimate was not based on Public Works Department rates, yet in Ex.PW-1/E it is stated that the estimate is prepared on the basis of the Government approved rates. It is not the case of the appellants that the Public Works Department rates are lesser than the rates at which the estimate has been prepared.

In view of the above-said position, there is no merit in the appeal. No substantial question of law arises. Hence the appeal is dismissed.

CMP No.1134 of 2005.

In view of the dismissal of the appeal, the application does not survive. The interim stay granted on 29th December, 2005 stands vacated. The application is also dismissed.

September 8, 2006 **(Surjit Singh)**
(aks) **Judge.**